OUR CORRESPONDENCE.

THE NEW BUILDING ACT.

TO THE EDITOR OF THE BUILDER.

SIR,—As to the principle upon which payment for party walls may be established.

Take 14 Geo. 3, cap. 78, sec. 41. The builder of a party wall is to be reimbursed for half the cost, according to the rate of the adjacent building, by the owner, who is entitled to the improved rent of such adjacent building.

It is so admitted on all hands that, in practice, this enactment has wrought injustice so incredible, that it is better to bury all in oblivion, lest human nature should despise itself; yet may it well be that the principle is right, and only the practice wrong.

Take clauses 111 and 112 of the Bill. When all charges are valued at prices to be fixed by the official referees, and approved by them; and when the costs, as ascertained, have been paid by the owner upon whom the payment shall have fallen, he is to "call upon all other persons interested in the premises, as freeholders, copyholders, ground landlords, lessors, lessees, and the like, but not upon yearly tenants, or tenants at will, to contribute a due proportion, according to the covenants of the several leases or agreements between them, *calculated according to both time and amount;*" and if all the interested parties cannot agree, then the official referees are to award between them.

As to the words "according to the covenants of the several leases or agreements between them," I can only suppose that they mean the ordinary repairing covenant, for if "party walls," be specially mentioned, there is nothing for the referees to decide; the lease settles the question. But as the word "*time*" may mean the original term granted, or the term unexpired, and "*amount*" may mean that of the bill of costs, or the rent actually paid, or the clear profit made, some interpreter may be needed.

Although so excessively indefinite in its wording, this provision, upon the face of it, appears to be so perfectly equitable, that it is requisite to bestow some care in justifying dissent from it, and to shew that, although apparently just, and fully intended to be so, it would not only, in some cases, be grossly unjust, but it would also be quite impracticable to carry it out satisfactorily.

It would be requisite to consider all the various ways in which house property may be let or held, did time and space admit; but a few instances will serve to shew the unworkable state of the clause. As it would be choked off at once by any especial provision in a lease as to "party walls" by name, I can only take it as applicable to the express or implied covenants to repair, and to surrender in good repair; but I may remark that, before this clause shall pass into law, some very clearly expressed limitation must be introduced, for that, as it now stands, it is to apply to all cases, including not only the rebuilding of party walls, but the substitution of party walls for ancient wooden partitions, and even the reparation of party walls; and this is the more needful, as the rebuilding or reparation may take place in very many, perhaps in most, cases of old property, without the knowledge of the parties who may have to pay the most.

As to the ways in which house property may be held.

The freeholder, having built or inherited house property, lets it to an annual tenant, at rack-rent. Here the freeholder is clearly liable to pay for the half party wall.

The freeholder lets it upon lease, at a full rent, but less than rack-rent, the lessee engaging to repair, and to return it in tenantable repair. Here the freeholder is clearly liable, because that the reparation of a party or other wall is not merely tenantable, but substantial reparation.

The freeholder lets it upon lease for a term of years, the lessee engaging to put it into complete repair, and to return it in complete substantial repair. Here the landlord lets it at a modified rent, more or less proportioned to the state of reparation. This appears to be the case in which landlord and lessee should each contribute a due proportion, "calculated according both to time and amount." Yet in this, one of the very simplest of all cases, there may be the most annoying complication.

What are the due proportions?

The house may be thirty, or three hundred years old (for there are such strange things yet) when leased. It may have been originally well built or badly built, or of good or bad materials; and the house of three or four hundred years old may really be more substantial than one of thirty years (as witness Crosby Hall, which was built in 1466, upon a ninety-nine years lease. It may have been upon a good or bad foundation; it may have failed wholly on account of originally bad foundation, or of foundation originally sufficient, but rendered insufficient by sewerage or other public works, draining water out of boggy earth, or drawing off running sand; or it may have failed in consequence of operations carried on by a neighbour, or even by the lessee himself, who may have excavated for the planting of machinery, or may have carried on a manufacture or business which, by jarring the house, and keeping it in constant tremor, gradually but certainly, as with a battering-ram, has disintegrated the mortar.

Age at least ought then to be one of the elements of a calculation *according to time*.

Condition, at the time of leasing, and cause of defect, are not mentioned in the clause, yet may they be of a large consequence in attaining a right understanding, and coming to a righteous decision in every case.

Even if age were excluded from the computation *according to time*, there would still have to be considered the original length of lease, and the portion yet unexpired. To which do the words apply? Is the original term the right basis, or the unexpired term? This is not specified by the Bill; and if it were, by what rule of proportion are the respective amounts payable by freeholders and lessees to be ascertained? The right proportions depending much upon the original length of lease, imposing, as a moral obligation, greater or less amount of responsibility upon a lessee; for, it can scarcely but be conceded, that a lessee of sixty years, seven of which are unexpired, stands in a very different situation from him of twenty-one years, seven of which are unexpired?

Next there would have to be considered the proportion according to rent. A premium or foregift may or may not have been given for the lease. A large or small sum may have been expended in reparation, alteration, or extension. It may have been leased at two-thirds, or one-third, or even one-tenth of a fair rack-rent, either in consideration of its state of reparation, or of premium paid: or, in consequence of the freeholder choosing rather to have a responsible lessee, at a comparatively small rent, than a doubtful one, at a higher rent.

I take it that the ready reply is—the rack-rent must be the basis of calculation; and the freeholder be charged in due proportion to what he receives, the lessee paying the remainder; but the clause does not so state; nor, if it did, do I yet see that such a provision could fairly be adjusted to the cases of reparation done, or of premium paid.

And, Sir, if we add to these perplexities a consideration that the freeholder may be the absolute possessor; or, he may hold it for life only, the estate being entailed; or, he may hold it only for his own life, or that of his wife, and after the death of either it may pass to others whom he neither knows nor cares for;—and, that the lessee may hold it for years certain; or for years contingent upon an uncertainty, as in cases of lease for seven, fourteen, or twenty-one years, or other periods, at the will of either lessor, or lessee, or both; or, for his own life, or for that of another; or for joint lives, or for the shortest or longest of three or more lives:—I almost think that you will agree with me, that, even in this, apparently one of the simplest of all cases, the clause cannot be satisfactorily worked out.

If we add to these the no uncommon cases, in old property at least, of one house being built upon separate freeholds, or part freehold, part copyhold, part leasehold, or held by one or more lessees upon different rates and lengths of tenure; and superadd to these, all the strange involutions of church and collegiate, and corporation, and trust, and litigated property; of leases renewable at fines certain, or customary, or uncertain; for ever, for certain periods to be attained by successive renewals, or for no certain period; of reversionary leases, of concurrent leases; of all the varieties and subdivisions of underleases; of mortgages, of bankruptcies, of insolvencies; of rents in money, of rents in corn, or other provisions; there will be such a glorious hash, that either the official referees can make no award at all, or; if they do, it must be set aside upon the ground of uncertainty, when Law and Equity will clap their bloated sides; for, I take it that even an Act of Parliament cannot make an unjust or ill-grounded award of three mystified men "final," while the decrees of a Lord Chancellor are open to appeal.

Again. The clause provides that ground landlords are, among others, to be chargeable with a portion of the expenses of pulling down, securing, repairing, and rebuilding party walls, party arches, and party fence walls, or other parts of houses or buildings.

Just remarking that the words "other parts" may include all parts of the whole building, I will endeavour concisely to shew that ground landlords, (taking that term in its obvious meaning, the owner of the soil which has been let upon building leases), from the very nature of the compact between them and their lessees, cannot justly be chargeable with any portion of the expense of rebuilding or repairing party walls, any more than with any other reparation.

The landowner, having no floating cash to expend in building, or, unable to attend to the management of house property, but desirous of increased income for himself, and to make fair provision for his descendants, leases his land to a builder, who has capital at command, and who can profitably hold and well look after houses.

The object of the lessee is to expend his capital advantageously, that is, to obtain from it a return so much larger than the market rate of interest for money lent as will compensate him for the additional risk of loss and trouble of management, and enable him, by laying by such surplus interest half-yearly, to recover the capital originally expended, within some reasonable number of years. After that period all rent beyond the ground-rent is clear profit, an annuity for himself and his descendants, until the termination of the lease, when the landowner, coming into possession, ceases to hold ground-rents, becomes a house owner, and no longer lets upon building, but upon repairing leases.

A very little consideration will shew that the very essence of the original compact between these two men, as honest men and men of business must be, that the lessee, who covenants to build houses in that, covenants also to leave houses, not ruins, or heaps of rubbish upon the land; and such being the essential element of the original compact between men equally well disposed, there really needs not a syllable about reparation in such a lease. Indeed, I fancy that nothing short of an act of the legislature, for some assumed public good, setting aside the common law of right and wrong, could justify a court of judicature in taking any other view of the question:—it would be a perversion of justice.

If this be so,—if houses, that is habitable places, are to be left upon the land, they must be left in a safely habitable state; and, with reasonable allowance for their age, they must be substantial, or they will not be safely habitable; and, if so, I conceive the necessary conclusion must be, that the lessee, who by the essence of the original compact is bound to leave houses substantial in comparison with their age, is the only person justly chargeable with the cost of repairing party walls, as well as all other walls—for if they be not sound, how can the houses be substantial, or safely habitable?

As a matter of necessity, the spirit of the compact with the original lessee, binds all sub-lessees in a like obligation to the owner of the soil.

I have, for the sake of the illustration, mentally assumed that the building term could be so long, as that bricks and mortar might fairly be almost worn out; but, taking the ordinary run of building leases, sixty-three years, and ninety-nine years (i. e. two or three generations), it is so unreasonable to suppose that any wall, honestly built, could by any possibility short of actual violence be ruinous, that I cannot conjecture how any one could think of introducing the term "ground landlord" into the clause, unless it be that, by those words, not the owners of the soil but the "owners of improved ground rents" are meant.

It is not worth while to carry on my rude and inartificial inquiry with respect to them, for the compact between the lessee, who underleases ground only for building upon, and the sub-lessee, is so exactly similar to that between landowner and lessee, that if the conclusion be good in one case, it is so in the other; and if so, the owner of improved ground-rents is no more liable to the reparation or rebuilding of party walls than the landowner.

Statute law may say it shall be so, but it will violate the eternal law of right and wrong.

The term unexpired, be it long or be it short, has nothing whatever to do with the question. If it be short, the lessee has had all the profit of a long preceding term; if it be long, he will have a better chance of repayment; but, short or long, the unswerving principles of justice save the landowner harmless.

If it were not so, taking the old-fashioned ground-rents of a pound, or ten pounds a house, the cost of rebuilding a half party wall might not only sweep away all rents, but leave the landowner in debt.

But, Sir, there is a tether upon our judgment, even in this so obvious a case. In favourite districts, for commercial or other purposes, of late years, ground-rents have so increased in amount, as to have become enormously disproportioned to the rack-rents.

The common dictates of right and wrong call in such cases for legislative provision, because that the boundaries of right and wrong have been overstepped by the landowner, and he ought not to be suffered to have the advantage of his own wrong. However unwise people may be to give them, ground-rents of four, six, or eight guineas the foot, by the year, are "out of all reason;" and landowners who gain so largely ought to bear part of the burthen.

The simple question is, what proportion would be just? but to this, what answer can be given? for even here arises the difficulty, that a practice has sprung up of at once disposing of the property let